

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAMIEN PHILLIPS,
Plaintiff

v.

CIVIL NO. 4:09-CV-771

RONALD LONG, MARY LOU
SHOWALTER, DAVID J. WAKEFIELD,
and ALAN B. FOGEL,
Defendants

O R D E R

The background of this order is as follows:

We are considering Magistrate Judge Smyser's Report and Recommendation ("R&R") (Doc. 107), which recommends that we grant defendants' motions for summary judgment (Docs. 82, 87). Plaintiff objects to the R&R, arguing that we should reject Magistrate Judge Smyser's conclusions and deny summary judgment. Because plaintiff filed objections to the R&R, the Court must "make a *de novo* determination of those portions of the report or specified proposed finding or recommendations to which objection is made." 28 U.S.C. § 636(b)(1).

Although we view the evidence in the light most favorable to plaintiff at this procedural juncture, plaintiff's arguments that sufficient evidence supports his 8th Amendment claims, and that a reasonable jury could return a verdict in his favor, are unconvincing. Magistrate Judge Smyser correctly applied the law to this case, and we

agree with his conclusion that defendants' summary judgment motions should be granted. Our reasoning mirrors that of the magistrate judge, and therefore, no further comment is necessary.

ACCORDINGLY, this 25th day of August, 2011, upon consideration of the report and recommendation of the magistrate judge (Doc. 107), to which objections were filed, and upon independent review of the record, it is ordered that:

1. The magistrate judge's report (Doc. 107) is adopted.
2. Plaintiff's objections (Docs. 108-109) are overruled.
3. The motion for summary judgment (Doc. 82) filed by defendants Fogel, Showalter, and Wakefield is granted.
4. The motion for summary judgment (Doc. 87) filed by defendants Beaven, who was subsequently dismissed from this case, and Long, who currently remains a party to this case, is granted.
5. The Clerk of Court shall enter judgment in favor of the defendants and against the plaintiff.
6. The Clerk of Court shall close this file.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge